



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No: 6520-16
NOV 20 2017

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] USN, XXX-XX [REDACTED]

- Ref: (a) 10 U.S.C. §1552
(b) Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Request by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014
(c) PDUSD Memo of 24 Feb 16 "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI"
(d) PDUSD Memo of 25 Aug 17 "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment"

Encl: (1) DD Form 149 (NR20160006520)
(2) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting correction to his record to include an upgrade to his characterization of service from other than honorable to honorable, a change to his separation code from "GKQ" to "JBK," a change to his reentry (RE) code from RE-4 to RE-1, and change to his narrative separation reason from "Misconduct (Serious Offense)" to "Expiration of Obligated Service." References (b) through (d), and enclosures (1) and (2) apply.

2. The Board, consisting of Members [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 August 2017 and, pursuant to its regulations, determined that the partial corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of your naval records and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

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- b. Enclosure (1) was filed in a timely manner with respect to the statute of limitations,
- c. Petitioner enlisted in the Navy on 4 March 1997. During boot camp, Petitioner's performance earned him a meritorious promotion to E-3. Following boot camp, Petitioner completed Machinist Mate Class "A" School, and subsequently reported to duty onboard the [REDACTED]
- d. On 7 September 1997, Petitioner received nonjudicial punishment (NJP) for violating the Uniform Code of Military Justice (UCMJ), Article 128 (assault on a [REDACTED] foreign national) and Article 134 (drunk and disorderly conduct in [REDACTED], and was awarded restriction, forfeiture of pay and reduction in rank. Petitioner contends that the NJP was the result of an incident during which he accidentally spilled a drink on a woman, was asked to buy her a replacement drink but did not have the money to do so, and was subsequently assaulted by the woman.
- e. Petitioner was accepted into Basic Underwater Demolition School (BUDS), successfully completed BUDS, and reported to Seal Team [REDACTED]. Petitioner continued his military service without disciplinary incident for over ten years. In the summer of 2006, Petitioner was exposed to an Improvised Explosive Device (IED), and suffered a traumatic brain injury (TBI), with symptoms of concussion and loss of consciousness for less than 30 minutes.
- f. On 16 June 2008, during deployment in Iraq, Petitioner received a second NJP for violating UCMJ, Article 91 (insubordinate conduct), Article 92 (four specifications of violating a lawful order by wrongfully introducing alcoholic beverages to Iraq, possessing alcoholic beverages, consuming alcoholic beverages, and failing to participate in a combat mission), and Article 112 (drunk on duty) and was awarded a written reprimand, restriction for 60 days, and reduction in rank. Petitioner was returned to the States for administrative separation processing.
- g. On 30 December 2008, Commanding Officer, Naval Special Warfare Command recommended that Petitioner be administratively separated on the basis of misconduct with an other than honorable discharge and an RE-4. DISCHARGED??
- h. Petitioner's evaluation for the period ending in February 2009 stated that although Petitioner was a superb department head, a motivated operator, and a tactical mentor, he had a disregard for the UCMJ and he was not recommended for retention.
- i. On 22 December 2009, Petitioner was diagnosed by Veterans Affairs with TBI and Post-Traumatic Stress Disorder (PTSD). The diagnostic evaluation noted that Petitioner's judgment was impaired and his abstract thinking was found within normal limits.
- j. In 2012, the Naval Discharge Review Board (NDRB) considered whether an upgrade to Petitioner's discharge characterization was appropriate, but determined by a split vote (3 to 2) that Petitioner's other than honorable characterization was proper. NDRB considered Petitioner's PTSD diagnosis when making its determination.

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k. The Board took into consideration Petitioner's request for a change to his narrative reason for separation, his RE-4, and his discharge characterization.

l. The Board, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors, such as Petitioner's PTSD diagnosis and his request that the diagnosis be considered when determining if the other than honorable discharge should be upgraded as a matter of justice. Petitioner's assertion of suffering from PTSD was given liberal consideration, and fully and carefully considered by the Board in light of references (b)-(d). In accordance with references (b)-(d), the Board gives liberal and special consideration to treatment documentation of PTSD symptoms and medical determinations of the existence of service-connected PTSD. The Board also noted that Petitioner suffered from a TBI and that Veterans Affairs indicated that Petitioner's judgment was impaired. Petitioner's TBI was considered in accordance with current regulatory guidance, and was taken into account as a mitigating factor for Petitioner's misconduct.

m. The Board determined that based on the medical diagnoses of PTSD and TBI as evidenced by the statements from Veterans Affairs and as corroborated by the information in Petitioner's service record, an upgrade to Petitioner's discharge characterization from other than honorable to general is warranted. The Board noted that Petitioner's misconduct was mitigated by the PTSD and TBI, and that an upgrade to his discharge characterization appropriately reflects the adverse impact the PTSD and TBI likely had on Petitioner while in service. The Board determined that although the diagnoses mitigated Petitioner's misconduct for purposes of determining the characterization of service, Petitioner nonetheless engaged in a pattern of behavior that supported his current narrative separation reason of "Misconduct-Serious Offense," the separation code of GKQ, and the issuance of an RE-4 code. The Board determined that Petitioner's PTSD and TBI diagnoses warranted the limited corrective action of an upgrade to his discharge characterization, but that his medical conditions did not negate the misconduct in which he engaged during his time in the Navy. The Board noted that Petitioner's misconduct had far-reaching effects with his transfer from combat duty back to the States, and the loss of Petitioner's skills and expertise in a combat environment. When determining whether additional corrective action was warranted, that the Board specifically noted Petitioner's Commanding Officer's recommendation for separation. Given the gravity of Petitioner's misconduct while in combat operations, the Commanding Officer's recommendation and Petitioner's final evaluation not recommending him for retention, the Board determined that changes to his separation code, reentry code and narrative separation reason were not warranted. Accordingly, the Board concluded that only the partial corrective action of an upgrade to Petitioner's discharge characterization from other than honorable to general is warranted.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of reference (b)-(d) and Petitioner's PTSD diagnosis and TBI diagnosis, the Board concludes that Petitioner's request warrants partial relief.

In this regard, the Board notes Petitioner's overall record of military service and current policy as established in references (b)-(d) and concludes that that relief in the form of a change to

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Petitioner's other than honorable discharge characterization to a general discharge characterization is warranted.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected to show that on 6 February 2009, he was discharged with a general characterization of service.

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

That a copy of this report of proceedings be filed in Petitioner's naval record.

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 19 July 2016.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

[REDACTED]

Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]

Executive Director